

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SUNG D. KIM,

Plaintiff,

- against-

COUNTY OF NASSAU, NASSAU COUNTY
POLICE DEPARTMENT, THOMAS KRUMPTER
former acting Police Commissioner, in his individual
and official capacity, SERGEANT TARA COMINSKY
and POLICE OFFICER BRIAN MONK,

Defendants.
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FEUERSTEIN, District Judge:

ORDER

19-CV-3264 (SJF)(ARL)

**FILED
CLERK**

4:14 pm, Oct 20, 2020

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

Before the Court is a Report and Recommendation (“the Report”) of the Honorable Arlene R. Lindsay, United States Magistrate, dated October 2, 2020, (1) recommending (a) that defendants’ motion to dismiss be granted and the case dismissed; and (2) advising *inter alia*, (a) that “[a]ny objections to th[e] Report . . . must be filed with the Clerk of the Court . . . within 14 days” and (b) that “[f]ailure to file objections within this period waives the right to appeal the District Court’s Order.” Report at 34 (citations omitted). A copy of the Report was served upon counsel for all parties via ECF on the date it was issued, October 2, 2020. Despite such service, no objections have been filed, nor has any party sought an extension to do so. For the reasons set forth below, Magistrate Judge Lindsay’s Report is adopted in its entirety.

I. DISCUSSION

A. Standard of Review

Any party may serve and file written objections to a report and recommendation of a magistrate judge within fourteen (14) days after being served with a copy thereof. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2). While any portion of such a report and recommendation to

which a timely objection has been made is reviewed *de novo*, *see* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3), the Court is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. *See Thomas v. Arn*, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). Indeed, “[w]here parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)). To accept the magistrate’s report and recommendation absent a timely objection, the court need only be satisfied that there is no clear error on the face of the record. *See* FED. R. CIV. P. 72(b); *Baptichon v. Nevada State Bank*, 304 F. Supp. 2d 451, 453 (E.D.N.Y. 2004), *aff’d*, 125 F. App’x 374 (2d Cir. 2005).

Nonetheless, the waiver rule is “nonjurisdictional” and, thus, the Court may excuse a violation thereof “in the interests of justice.” *King v. City of N.Y., Dep’t of Corr.*, 419 F. App’x 25, 27 (2d Cir. 2011) (summary order) (quoting *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993)); *see also DeLeon v. Strack*, 234 F.3d 84, 86 (2d Cir. 2000). “Such discretion is exercised based on, among other factors, whether the defaulted argument has substantial merit or, put otherwise, whether the magistrate judge committed plain error in ruling against the defaulting party.” *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); *accord King*, 419 F. App’x at 27. Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

B. Review of the Report

No party has filed objections to the Report within the time prescribed in 28 U.S.C.

§636(b)(1)(C), nor has any party sought an extension of the deadline. As the parties were provided with adequate notice of the Report and an express warning of the consequences of a failure to timely file objections thereto, their failure to interpose timely objections to the Report operates as a waiver of further judicial review. *See Caidor v. Onondaga Cnty.*, 517 F.3d 601, 602-03 (2d Cir. 2008); *Mario*, 313 F.3d at 766. Thus, this Court “need only satisfy itself that there is no clear error on the face of the record to accept a magistrate judge’s report and recommendation.” *Safety-Kleen Sys., Inc. v. Silogram Lubricants Corp.*, No. 12-CV-4849, 2013 WL 6795963, at *1 (E.D.N.Y. Dec. 23, 2013). After a careful review of the full record, including Magistrate Judge Lindsay’s thorough and well-reasoned Report, the Court finds no plain error in either the reasoning or the conclusions reached therein, and accordingly, adopts it in its entirety.

II. CONCLUSION

The Report is adopted in its entirety. Defendants’ motion to dismiss, Docket Entry [14] is granted and the Clerk of the Court is directed to close the case.

SO ORDERED.

/s/ Sandra J. Feuerstein

Sandra J. Feuerstein
United States District Judge

Dated: Central Islip, New York
October 20, 2020